

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4595 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

N M BHAVSAR

Versus

STATE OF GUJARAT

Appearance:

MR RJ OZA for Petitioners

MR MUKESH PATEL for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/02/97

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The petitioners, in all 38 in number, filed this Special Civil Application before this Court have prayed for quashing and setting aside of the Government Resolution dated 18th April 1983, annexure 'D', so far as it excludes Sarkhej from Ahmedabad agglomeration area.

3. The petitioners are working in various capacities like Principal, Teachers, Clerks, Peons, etc. in Shri Sarkhej Kelavani Mandal, Sarkhej. They belong to teaching and non teaching staff of the said school which is registered secondary school. The school is receiving grant-in-aid. Sarkhej is at a distance of about 3.8 kms. from the Ahmedabad Municipal limits as per the say of the petitioners. The petitioners have come up with the case that Sarkhej is within the peripheral area of 5 Kms. from the Ahmedabad Municipal Corporation limits. The petitioners were receiving House Rent Allowance (HRA) and City Compensatory Allowance (CCA) with effect from 2nd July 1981. Sarkhej was found to have pronounced urban characteristics in the year 1981. They have been paid this HRA and CCA by the school as per the directions of the District Education Officer, Ahmedabad, as contained in his letter dated 7th September 1981. But after this Resolution dated 18th April 1983, annexure 'D', the District Education Officer, Ahmedabad, informed to the school under its letter dated 17th August 1984 that the petitioners are not entitled for HRA and CCA with effect from 1st September 1984. The petitioners filed this Special Civil Application before this Court and challenge is made to the Resolution dated 18th April 1983. Interim relief has been granted by this Court in terms of para 15 and in pursuance of the interim relief, the petitioners are getting HRA and CCA till date, on which there is no dispute between the parties. None of the respondents have filed any reply to the Special Civil Application. The petitioner No.27 filed affidavit in this Special Civil Application and a document has also been filed enclosed to it wherefrom it has been contended that in consensus of the year 1991, Sarkhej has been included within agglomeration limits of the Ahmedabad city. Shri Mukesh Patel, learned counsel for the respondents has produced on record a zerox copy of the letter dated 30th August 1996 of the Assistant City Development Officer, Ahmedabad Urban Development Authority, Ahmedabad, addressed to Shri Narendrabhai B. Joshi, wherein it has been mentioned that Sarkhej is within the agglomeration (ULC) limits of the Ahmedabad city. Relying on these two documents, the learned counsel for the petitioners contended that this writ petition deserves to be accepted. However, the fact remains that for the period between 1st September 1984 till 1991, the dispute still survives. The question is whether for this period, the petitioners are entitled for HRA and CCA or not. However, it is a fact that for all these years, the petitioners are getting HRA and CCA, but under the interim order of this Court. The learned counsel for the petitioners next contended that discrimination has been

sought to be made in the matter of payment of HRA and CCA in between the servants in grant-in-aid institutions and the other Government servants. Other State Government servants like employees of Industrial Training Institute, Sarkhej and Central Government servants like Railway Department employees in Sarkhej area are getting the aforesaid allowances. I do not consider it to be appropriate to give any decision on this point as I consider it to be a fit case where interest of justice will be met in case this writ petition is disposed of with directions to the Secretary, Education Department, State of Gujarat, to decide this matter on merits after hearing the petitioners or their representatives in the matter. However, while hearing the matter, the Secretary, Education Department, State of Gujarat, shall take into consideration the fact that the petitioners are getting for all these years, the HRA and CCA allowances under the Court's order, and that the petitioners are the teachers and many of them would have retired. In case the Secretary, Education Department, State of Gujarat considers that the petitioners were not entitled for the above allowances for the intervening period, i.e. from 1st September 1984 till 1991 or even thereafter, then the point has to be considered whether recovery should be effected or not in view of the fact that these amounts have been paid to the petitioners under the Court's order, may be by way of interim relief. A reasoned order has to be passed where the matter is decided against the petitioners and a copy of the same may be sent to the petitioners. In case the Secretary, Education Department, State of Gujarat, accepts that Sarkhej falls within the agglomeration limits of Ahmedabad city from the year 1991, then the question as to whether the amount of HRA and CCA paid to the petitioners for the period from 1st September 1984 till the matter is decided, has to be waived or not, has to be decided on merits.

4. In the result, this Special Civil Application stands disposed of in aforesaid terms. Rule stands disposed of accordingly with no order as to costs.

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